

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . March 5, 2014  
Debtor. . 10:00 a.m.  
 . . . . .

HEARING RE. CORRECTED MOTION OF THE OFFICIAL COMMITTEE OF  
RETIREES FOR ENTRY OF AN ORDER ALLOWING AN  
ADMINISTRATIVE EXPENSE CLAIM (DKT#2660)  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 MR. WILKINS: Good morning, your Honor. Matthew  
4 Wilkins on behalf of the Retiree Committee. I have an  
5 attorney admission this morning, your Honor.

6 THE COURT: Okay.

7 MR. WILKINS: Please meet Christopher Soper --

8 MR. SOPER: Good morning, your Honor.

9 MR. WILKINS: -- from the Dentons office.

10 THE COURT: Mr. Soper.

11 MR. WILKINS: He works in Illinois and Minnesota and  
12 is a licensed attorney in good standing in the courts of New  
13 York, Illinois, and Minnesota. And we've been up to the  
14 District Court, paid the fee and everything and --

15 THE COURT: Okay.

16 MR. WILKINS: -- fees for him and --

17 THE COURT: Are you prepared to take the oath of  
18 admission to the Bar of this Court?

19 MR. SOPER: I am.

20 THE COURT: Please raise your right hand. Do you  
21 affirm that you will conduct yourself as an attorney and  
22 counselor of this Court with integrity and respect for the  
23 law, that you have read and will abide by the civility  
24 principles approved by the Court, and that you will support  
25 and defend the Constitution and laws of the United States?

1 MR. SOPER: I do.

2 THE COURT: Welcome, sir.

3 MR. SOPER: Thank you.

4 THE COURT: We will take care of your paperwork.

5 MR. WILKINS: Thank you, your Honor.

6 THE COURT: All right. Let's proceed with the  
7 argument, please.

8 MR. ALBERTS: Good morning, your Honor. Sam Alberts  
9 on behalf of the Retiree Committee from Dentons. Your Honor,  
10 we're here on the committee's motion for entry of an order  
11 allowing administrative expense claim. It appears at ECF  
12 Number 2656, and the corrected version filed on February 7th,  
13 a day later, is at 2660. Your Honor, we've received one  
14 opposition to the request -- that was by the city -- which  
15 appears at ECF 2705, and their brief in opposition, which is  
16 2706, ECF number. Both of those were filed on February 20th.  
17 The Court entered this notice of hearing on the 25th, and we  
18 have filed a reply, which appears at 2782.

19 Your Honor, at bottom what we are requesting is a  
20 determination and order of this Court that the committee's  
21 request for a subject errors and omission policy -- or really  
22 it's technically a miscellaneous policy -- for committee  
23 members is actual and necessary under Section 503(b)(3)(F)  
24 and that the city should be directed to pay this amount in  
25 compliance with the fee review order that was entered on

1 September 9th, 2013.

2 Let me give a little background, your Honor. I'll  
3 get into the arguments. And we also have with us today the  
4 people who had submitted affidavits -- Ms. Renshaw, who is  
5 the committee chair; Ms. Gail Wilson, who sits on the  
6 committee -- I think who both can give flavor as to why this  
7 request is being made and the environment in which they are  
8 working on the committee now and the community in which they  
9 live. We also have brought the insurance broker, Brian  
10 Smith, who can testify as to how the policy was placed and  
11 why we believe that the amount for the policy and the terms  
12 are reasonable.

13 The one thing we have not provided the Court is the  
14 actual letter agreement or the specimen policy. It's a form  
15 policy, which would be populated, assuming this Court  
16 approves it. The letter agreement with all of the terms, the  
17 material terms, has been shared with the city. We are happy  
18 to share that with the Court. We would ask that that be done  
19 in camera because the one thing we don't want to do is  
20 disclose, if possible, the amount of coverage that is being  
21 sought. That amount is known to the city, and we can discuss  
22 elements of it without getting a specific number. I notice  
23 that the press is in the court today, and we would rather  
24 that the amount not be let out because, quite candidly, we  
25 don't want to invite litigation for seeking those proceeds.

1 THE COURT: Doesn't the very existence of insurance  
2 do that?

3 MR. ALBERTS: No. In fact, your Honor, what you  
4 will hear is that --

5 THE COURT: Oh?

6 MR. ALBERTS: -- the -- well, our hope, your Honor,  
7 we have set this policy up in a way so that it was really  
8 designed to cover defense costs. Okay. If we really thought  
9 there was legitimacy behind any suit that could be brought,  
10 the amount of the policy that would have been requested would  
11 have been substantially more. In fact, you will hear the  
12 testimony.

13 THE COURT: Is there a -- is there an actual  
14 liability element to the insurance coverage?

15 MR. ALBERTS: Yes, there is.

16 THE COURT: There is.

17 MR. ALBERTS: Yeah.

18 THE COURT: Okay.

19 MR. ALBERTS: Yeah, there is, but it's a very low  
20 coverage amount relative to the nine billion, eleven billion,  
21 whatever the amount of money of claims that the Retiree  
22 Committee is being asked to navigate in this case.

23 Your Honor, just in terms of background, on July  
24 19th, the very day after the petition was filed, the city in  
25 this case moved for the appointment of the Retiree Committee.

1 That's ECF Number 20.

2 THE COURT: I don't need background. What I need  
3 you to do is deal with the city's objections.

4 MR. ALBERTS: Okay. All right. Very good. Well,  
5 let me start then with -- what I would like to do then is  
6 start with the city's arguments or objection that this Court  
7 does not have authority over the matter; that the city cannot  
8 be compelled to pay this. What I'd like to do is hand up --  
9 it is attached to our reply as Exhibit Number 1, I believe,  
10 but I have a copy here.

11 THE COURT: I have it. That's all right.

12 MR. ALBERTS: Okay. It's the fee review order, and,  
13 in particular, if you would turn to page 2 of that order,  
14 paragraph H, what it says is that the city has expressly  
15 consented to the relief provided in paragraphs 11, 24, and  
16 27. Okay. You move on to paragraph 11. What that paragraph  
17 provides for is the city's payment of Retiree Committee  
18 expenses a hundred percent, and then there's a process later  
19 on in paragraph 24 which talks about if there's a dispute, we  
20 come to court. Your Honor, I believe quite clearly that the  
21 city has consented to the payment of reasonable committee  
22 expenses. Now, they have said, well, what we meant by that  
23 was food maybe and parking and other things. I would say,  
24 your Honor, that insurance in this case is a reasonable and  
25 necessary expense for the committee to do its job, and so as

1 to the 904 issue, your Honor, I think that -- even if one  
2 assumes that 904 would apply in this case, I don't think it  
3 applies to this issue because the city has already consented  
4 to payment of committee member expenses as well as committee  
5 professional fees. In fact, your Honor, as you may recall,  
6 at the hearing on this, there was a big concern raised by the  
7 U.S. Trustee and other parties about whether the city would  
8 agree to pay for the expenses and fees of the committee, and  
9 if they would not consent to that, then there was a real  
10 concern that no committee could be formed because there would  
11 not be representation and other things that a committee would  
12 need to do. I would argue again, your Honor, this is  
13 something that while -- and the city is correct in this.  
14 There are not a lot of cases where a committee has sought  
15 insurance, especially in a Chapter 9. That doesn't mean it  
16 can't happen, and this is a very unique case in a  
17 jurisdiction which, unfortunately, has a reputation for being  
18 quite litigious. And that is really what is driving this,  
19 your Honor is committee member concern about being sued even  
20 if it is a frivolous suit. Now --

21 THE COURT: Doesn't the Barton Doctrine protect the  
22 members of the committee?

23 MR. ALBERTS: Your Honor, the problem with the issue  
24 of qualified immunity is that even if we go a step further  
25 and the city were to provide in its plan the normal



1   exculpations and releases for committee members, that would  
2   not necessarily protect a committee member who is actually  
3   sued. They would still need to hire counsel. Now, we  
4   actually -- in pricing this policy, we assumed that at the  
5   end of the day, the city would put in a plan a release and  
6   exculpation. What the committee members' concerns was, well,  
7   that's great, and we believe we're not doing anything wrong,  
8   but what if somebody sues us? And we've lived in the city  
9   long enough to know that's a real possibility.

10           THE COURT: Well, but the Barton Doctrine is a  
11   little bit different from qualified immunity, isn't it?

12           MR. ALBERTS: I thought -- I understood the Barton  
13   Doctrine would apply to trustees in their trust capacity and  
14   would require somebody to come back into the court where the  
15   trustee is to sue. Your Honor, that may be the case. In  
16   fact, there may be a retention of jurisdiction provision in  
17   the plan that does something similar. That doesn't mean  
18   somebody is not going to file a suit out in state court.  
19   That is the problem we're dealing with. We're dealing with  
20   nine members, seven of whom were retained on the committee in  
21   their individual capacity. I have the appointment notice  
22   here which shows that. There are only two, one for the UAW  
23   and one for AFSCME, who were appointed as part of their  
24   organizations. These other seven members are doing this in  
25   their individual capacity. Now, yes, a few of the others do

1 have affiliations with associations, but there's no guarantee  
2 that those associations will step in or can afford to step in  
3 to help them. And at least three of the members, two of  
4 which are here today, are here strictly as committee members  
5 in their individual capacities, so they still are going to  
6 need somebody to step forward in a state court and try to  
7 remove it here.

8 THE COURT: Wait. Certainly it's uncomfortable  
9 being sued even if the suit is frivolous.

10 MR. ALBERTS: Yes. And, your Honor --

11 THE COURT: But \$600,000 is several police officers.  
12 It's several EMS. It's several fire. And the people they  
13 get serve -- people who they service are more than  
14 uncomfortable when they need service and don't get it.

15 MR. ALBERTS: Your Honor, we understand the plight  
16 of what the city is going through and the residents of --

17 THE COURT: The city is service delivery insolvent.  
18 I've already held that. Every dollar that goes to an  
19 insurance policy is one less dollar that the city can spend  
20 for essential services. How do I deal with that?

21 MR. ALBERTS: Well, there are a couple of points in  
22 response, your Honor. One, the policy is actually \$352,000.  
23 There's a \$250,000 deductible.

24 THE COURT: The city gets back when?

25 MR. ALBERTS: When the policy term expires, which is

1 at the end of eight years. Okay? They could -- I mean --

2 THE COURT: That's that many police officers they  
3 can't hire in the meantime.

4 MR. ALBERTS: Well, your Honor, in terms of cost, we  
5 all know in this case there have been expenditures, some very  
6 large, for dealing with things. For example, just the  
7 commitment fee for Barclays was over \$4 million for the DIP.  
8 Now, and, in addition, unlike Barclays, which the city agreed  
9 to indemnify --

10 THE COURT: I have to cut you off.

11 MR. ALBERTS: Okay.

12 THE COURT: The fact that the city has spent money  
13 in the ways you are about to tell me does not justify  
14 spending more ways -- more money in ways that aren't  
15 justified --

16 MR. ALBERTS: Your Honor, I think --

17 THE COURT: -- in principle; right?

18 MR. ALBERTS: Two wrongs don't make a right, but one  
19 of these is not a wrong.

20 THE COURT: I've already said at some point the city  
21 has to stop making bad financial decisions. Now is the time.

22 MR. ALBERTS: Well, I think this is actually a very  
23 wise financial decision.

24 THE COURT: Okay. Let's talk about that.

25 MR. ALBERTS: Okay.

1 THE COURT: Let's not talk about the Barclays money  
2 or any other money we can possibly identify.

3 MR. ALBERTS: All right. Let's talk about why this  
4 is wise.

5 THE COURT: Okay.

6 MR. ALBERTS: The city wanted this Retiree Committee  
7 because it wanted a counterparty to negotiate billions of  
8 dollars in reduction to retirement benefits, OPEB, and  
9 pension. They got their committee. They got the party. We  
10 are negotiating with them. We have negotiated with them in  
11 good faith. We've even brought -- resolved a very difficult  
12 issue concerning OPEB for 2014. These committee members are  
13 prepared to testify the amount of blowback they've received  
14 just on that, the anger that settlement has brought. Their  
15 concerns about being sued are not etherial. They are real.  
16 They want to complete their duty in this case, but they are  
17 very concerned about their personal financial well-being.  
18 And quite candidly, your Honor, we can't lose a single  
19 committee member, and I fear that if this Court were to deny  
20 the motion, we would lose one if not more committee members.  
21 And my concern is, as a result of that, the very delicate  
22 balance that was created by this committee by the U.S.  
23 Trustee for having three individuals, three people associated  
24 with associations, and three people associated with unions,  
25 would fall out of whack. I think the city wants a strong

1 committee. They want us to negotiate. They realize that  
2 while we have not seen eye to eye on all issues and we may  
3 not going forward, we have negotiated in good faith, and we  
4 have been very constructive to the process. And this case  
5 needs the committee to continue to function in a strong way,  
6 and if that's --

7 THE COURT: In your motion you --

8 MR. ALBERTS: Yes.

9 THE COURT: -- state at the bottom of page 2 and the  
10 top of page 3, "Without this relief, the committee itself  
11 will struggle to function as envisioned, and the city's  
12 reorganization will be compromised." What do you mean by  
13 that?

14 MR. ALBERTS: Well, your Honor, as I mentioned,  
15 there is a real concern that committee members will resign if  
16 they are not protected by insurance or indemnity, and the  
17 city has said that they will not indemnify the committee  
18 members, so they then have a choice. Do they go forward or  
19 do they -- or do they resign or leave or are their decisions  
20 somehow clouded because they're looking over the shoulder of  
21 what is -- of possibly being sued for compromising with the  
22 city? Okay. As a result of that, your Honor, I think that  
23 it creates a more inviting environment for the committee  
24 members to do their job, and they are working really hard. I  
25 asked Ms. Renshaw how many hours she's put into this case

1 already, and the amount is somewhere between 600 and 800  
2 hours since being brought on. That's a lot of time for  
3 somebody who's not compensated for it. All they want is to  
4 know that if they're sued, a lawyer is going to be there to  
5 protect them. I don't think that is a lot to ask of this  
6 Court or of the city.

7 THE COURT: It feels like you can buy a lot of  
8 lawyers' time for \$600,000 especially if the Barton Doctrine  
9 protects them.

10 MR. ALBERTS: Your Honor, I don't know --

11 THE COURT: If there's a suit in state court, you  
12 file a removal paper to bring it to the Bankruptcy Court, and  
13 it's done.

14 MR. ALBERTS: Your Honor, there was never a  
15 discussion, never a -- nothing from the city that indicated  
16 they would put 600 or 700 or \$800,000, and, quite frankly,  
17 your Honor --

18 THE COURT: No. I'm sure that's so. It just sounds  
19 like the premium is grossly disproportionate to the work  
20 that's required.

21 MR. ALBERTS: Oh, I don't think so, your Honor, and  
22 that's why we want insurance.

23 THE COURT: Why is it any more than just filing a  
24 notice of removal?

25 MR. ALBERTS: Your Honor, we have nine committee

1 members. There could be class action upon class action.

2 THE COURT: Any of which can be removed to this  
3 Court and dismissed for failure to abide by the Barton  
4 Doctrine.

5 MR. ALBERTS: Your Honor, somebody has got to  
6 prepare the papers. Somebody has got to be familiar with the  
7 case.

8 THE COURT: \$600,000?

9 MR. ALBERTS: Your Honor, actually, when you're  
10 dealing with a tail policy for six years, yes. I think  
11 that -- and you know what?

12 THE COURT: That only has to be done once, and then  
13 it's --

14 MR. ALBERTS: Your Honor, you've seen people file  
15 multiple pleadings in this case who you have stricken their  
16 pleadings. They refile and refile and refile. Why should we  
17 assume that it would be any different for these committee  
18 members?

19 THE COURT: I'm still not hearing \$600,000.

20 MR. ALBERTS: Your Honor, the amount of the  
21 insurance -- there is a formula.

22 THE COURT: You tell me. How long does it take to  
23 prepare a notice of removal, a one-page notice of removal?  
24 Fifteen minutes, twenty minutes?

25 MR. ALBERTS: Your Honor, I --

1 THE COURT: An hour if you really stretch it?

2 MR. ALBERTS: Your Honor, I think that, you know,  
3 the insurance is also there in case somebody -- you, I  
4 understand, may not be on the bench. I don't know what  
5 bankruptcy judge -- what the next bankruptcy judge may or may  
6 not do.

7 THE COURT: We're insuring against my retirement?

8 MR. ALBERTS: We're insuring for your retirement,  
9 and it's \$350,000, your Honor. The deductible would not be,  
10 you know --

11 THE COURT: The deductible is used to pay the first  
12 expenses; right?

13 MR. ALBERTS: Right.

14 THE COURT: So it's \$600,000 if the suits that you  
15 foresee do get filed.

16 MR. ALBERTS: If they do get -- well, if they do get  
17 filed and you drain the retainer by that much, yes, but, you  
18 know what? The good news is if you go beyond that amount, at  
19 least you've got coverage to protect for the overage. And I  
20 don't see a mechanism where the city is saying, "Oh, we'll  
21 agree to pay your legal fees." We've asked for the  
22 indemnity. They said they can't do it. Well, actually they  
23 can do it. They did it for Barclays. I realize I shouldn't  
24 raise Barclays, but they did put in there an indemnification  
25 provision. And our committee members before filing this



1 motion, in fact, before shopping for this insurance asked for  
2 that indemnity, and the city said, "We can't provide it." So  
3 what else did they have to do as an option? They didn't say,  
4 "I'm going to resign." They didn't say, "Well, I'm not going  
5 to do any work until I get some protection." They said,  
6 "Shop for the best policy you can," and that's what we did,  
7 and we found a policy that fits within the guidelines of what  
8 these policies go for given the amount. I have the witnesses  
9 here. I don't know if you need to hear from them or not. I  
10 don't know if you have any other questions for me, but, your  
11 Honor, I do think that, you know, under the standards that  
12 have been announced, including the McDow case, this is a  
13 situation, while, yes, you know, first in Chapter 9, not the  
14 first in bankruptcy, and, quite candidly, very warranted  
15 under the circumstances of this case.

16 THE COURT: Thank you, sir.

17 MS. LENNOX: Good morning, your Honor. Heather  
18 Lennox of Jones Day on behalf of the city. I'm not going to  
19 repeat everything that we've put in our papers. I know your  
20 Honor has read it. We have agreed to pay the reasonable  
21 expenses of the members of the committee, and so when we were  
22 evaluating this particular request, we looked at the actual  
23 words of Section 503(b)(3)(F) of the Bankruptcy Code that the  
24 expense be an actual necessary expense incurred by a member  
25 of the committee appointed under Section 1102 if the expense

1 is incurred in the performance of the duty of such committee.  
2 So if you parse the actual words and you look at a little bit  
3 of the legislative history, we believe that these types of  
4 expenses are contemplated to be de minimis out-of-pocket  
5 expenses. The legislative history of this section  
6 references, and I'm quoting from the House report, quote,  
7 "reimbursement of their out-of-pocket expenses such as travel  
8 and lodging." Collier's similarly, in explaining this  
9 section, refers to the types of expenses that should be  
10 reimbursed as, quote, "travel expenses to attend meetings,"  
11 and, quote, "reimbursement for telephone charges, postage,  
12 messenger services, and the like." Payment of over a half a  
13 million dollars of insurance premiums and retentions is not  
14 commonly understood as an out-of-pocket expense.

15           It is also, your Honor, this expense is an expense  
16 of the committee as a whole and not an expense of an  
17 individual committee member, so in this vein, to the extent  
18 that the committee relies on McDow, even if that case were  
19 factually apposite, which, as we state in our papers, we  
20 don't believe it is, we think it's been wrongly decided  
21 because an expense like this just does not fall within the  
22 statute's specific and plain meaning. In addition, even if  
23 it did, we don't believe it meets the tests of actual and  
24 necessary or reasonable. As your Honor pointed out, the  
25 Barton Doctrine exists. Qualified immunity exists. The

1 members joined the committee without insurance. They've  
2 acted in good faith for seven months without insurance,  
3 including, as Mr. Alberts pointed out, concluding a difficult  
4 agreement to modify healthcare benefits.

5 THE COURT: Let's pause there.

6 MS. LENNOX: Yes, sir.

7 THE COURT: What I heard Mr. Alberts say -- and I  
8 invite his comment if I heard him wrong -- was that with this  
9 insurance, the members of the committee would feel freer to  
10 negotiate with the city and make the kinds of deals that the  
11 city feels it needs.

12 MS. LENNOX: Sure.

13 THE COURT: Is that worth \$600,000?

14 MS. LENNOX: I have two responses to that, your  
15 Honor. One is more factual, and one is along the lines of  
16 what we've told the committee. We do recognize the  
17 difficulty of this case. We recognize the high-profile  
18 nature of this case. However, if we allow insurance to be  
19 purchased for a committee in this case, there are a lot of  
20 other high-profile very contentious cases that involve  
21 Retiree Committees in Chapter 9 or Chapter 11 across the  
22 country. This is a dangerous precedent to set that insurance  
23 must be purchased in every case because every committee is  
24 going to want it. What the factors that --

25 THE COURT: Well, but that's not your concern --

1 MS. LENNOX: Well --

2 THE COURT: -- nor mine actually.

3 MS. LENNOX: Not for this particular case, but it is  
4 an issue. Where courts have found in the highly rare cases,  
5 as McDow stated, is where members have actually resigned. In  
6 McDow three members had resigned. The two that were  
7 testifying had threatened to resign. We don't have that in  
8 this case. I understand the discomfort, and to address the  
9 discomfort, which is all we've heard about -- we haven't  
10 heard about resignations, and we also haven't heard that the  
11 U.S. Trustee couldn't appoint people even if there were  
12 resignations. Nevertheless, we fully expect that if the  
13 committee continues its fulfillment of its fiduciary duties,  
14 the parties and this Court will include in the plan of  
15 adjustment additional protections for the committee that were  
16 referenced in their motion, and there can be additional  
17 protections beyond exculpation. The city has conveyed this  
18 view repeatedly to counsel to the committee that discussions  
19 about what's going on here should be dealt with in the  
20 context of negotiating the terms of a plan of adjustment. In  
21 fact, in the reply that the committee filed in Footnote 5  
22 where they listed plans that include that, that's the whole  
23 point. These provisions were included in the plan that had  
24 been developed, had been finalized, and had been negotiated.

25 THE COURT: Well, but none of those plan provisions

1 nor qualified immunity nor the Barton Doctrine, as Mr.  
2 Alberts points out, protects an individual committee member  
3 when they get service of process.

4 MS. LENNOX: No. That's --

5 THE COURT: They'll have to find a lawyer, at least  
6 presumably, to file whatever should be filed, whether it's a  
7 notice of removal or a motion to dismiss or whatever it is,  
8 and that costs them money which --

9 MS. LENNOX: Yes.

10 THE COURT: -- they don't have. What do we do about  
11 that?

12 MS. LENNOX: That is where I have discussed with Mr.  
13 Alberts trying to figure out ways to protect his committee  
14 members for the good faith performance of their duties in  
15 whatever we determine should go into the plan of adjustment.

16 THE COURT: What might it be?

17 MS. LENNOX: It could be, for example, setting aside  
18 a little pot of money for defense costs. It could be -- you  
19 know, there are other things that creative lawyers and the  
20 Court can come up with. We should talk about those things,  
21 but it doesn't require the city taking \$600,000 out of its  
22 coffers to buy an insurance policy.

23 THE COURT: I thought Mr. Alberts reported that the  
24 city had determined that it was not able to do that.

25 MS. LENNOX: Mr. Alberts reported that the city

1 thought it could not indemnify. There are other things that  
2 the city can do, and we've always told Mr. Alberts that we'd  
3 be willing to talk about them in the context of plan  
4 negotiations.

5 THE COURT: Well, how about in the context of trying  
6 to resolve this motion?

7 MS. LENNOX: What we were told --

8 THE COURT: Are you willing to do that? Are you  
9 willing to do that?

10 MS. LENNOX: Sure. What we were told in -- what we  
11 were told is -- and it says it in the motion -- that it  
12 doesn't matter what protections they get in the plan. It  
13 doesn't matter if there's exculpation provisions. It doesn't  
14 matter if there are other protections. They want the  
15 insurance policy because they want the comfort of an  
16 insurance policy. That was stated directly in the motion, so  
17 we think -- you know, as your Honor knows, there's mediation  
18 going on. We think that that's an appropriate time to deal  
19 with this issue. And, your Honor, that's actually going  
20 above and beyond because -- and it's only because of the  
21 unique circumstances of this case because Retiree Committees  
22 serve all the time in highly contentious cases without  
23 insurance or indemnification or protections other than  
24 qualified immunity and the Barton Doctrine, but the city -- I  
25 mean, look --

1           THE COURT: So you discount the credibility of Mr.  
2           Alberts' assertion that because of the extremely high-profile  
3           nature of the committee's work, they are more susceptible to  
4           suit than your average even --

5           MS. LENNOX: I don't --

6           THE COURT: -- average large Chapter 11 case?

7           MS. LENNOX: I don't discount that, but I also don't  
8           believe that the law permits the purchase of an insurance  
9           policy under 503(b)(3)(F). That's not to say that in the  
10          context of a negotiated solution involving a plan there can't  
11          be other things that can be discussed. I don't think that  
12          the purchase of an insurance policy is permitted under the  
13          statute. I don't think -- I think your Honor understands our  
14          reasonableness position, and I don't mean to belabor it, so  
15          for the reasons that we've set forth in our papers and we've  
16          discussed today, we think this motion should be denied, your  
17          Honor.

18          THE COURT: I'd like to talk to Mr. Smith, please.

19          MR. SMITH: Good morning.

20          MR. SOPER: Good morning again, your Honor.

21          Christopher Soper for the committee. The committee would  
22          call Brian Smith to the stand.

23          THE COURT: Actually, I'm just going to talk to him.

24          MR. SOPER: Okay. That's fine.

25          MR. SMITH: Good morning, your Honor. Do you want

1 me here?

2 THE COURT: That's fine.

3 MR. SMITH: Okay.

4 THE COURT: I want to talk to you about this thing  
5 called the Barton Doctrine. Have you ever heard those words  
6 before this morning?

7 MR. SMITH: No, sir.

8 THE COURT: So you don't know what it is?

9 MR. SMITH: I have a guess, but I don't know, sir.

10 THE COURT: Okay. So it's fair to say that when you  
11 were negotiating the extent of the coverage and the price for  
12 the coverage, the premium, this issue of the Barton Doctrine  
13 was not brought up at all. Is that fair to say?

14 MR. SMITH: What was brought up, your Honor --

15 THE COURT: Is that fair to say, sir?

16 MR. SMITH: The term "Barton Doctrine" was not  
17 brought up, sir.

18 THE COURT: Okay. I assume that the concept of  
19 qualified immunity was discussed.

20 MR. SMITH: Yes, sir.

21 THE COURT: Okay. The Barton Doctrine is a very  
22 different doctrine. It's a doctrine which says that before a  
23 party is sued -- and I'll define the scope of this in a  
24 second, but before a certain group of parties are sued, the  
25 party that wants to bring that suit has to come to -- excuse



1 me -- come to the Court and get permission to file that suit,  
2 and generally the doctrine applies to court-appointed  
3 receivers, court-appointed trustees, but it has also been  
4 extended to creditors' committees and others who act in a  
5 representative capacity in a bankruptcy case, and you can see  
6 why. The Bankruptcy Court itself must have the exclusive  
7 jurisdiction to define what the duties of the representatives  
8 are in a bankruptcy case. It can't be for another court  
9 somewhere else to decide what those duties are and if that  
10 person violated those duties, so the Supreme Court in this  
11 case called Barton -- that's where the name Barton Doctrine  
12 comes from -- held that the court in which the  
13 representative, the defendant, is appointed must give its  
14 permission before a suit can be filed. That's the Barton  
15 Doctrine.

16 In your educated experience with insurance, which I  
17 accept and respect, would discussions of the Barton Doctrine  
18 have had any impact on either the scope of coverage or the  
19 price of the coverage?

20 MR. SMITH: Implicitly, without using that term, I  
21 think a lot of that concept was discussed. We were told by  
22 legal counsel that during the active period of this Chapter 9  
23 proceeding, the probability of any lawsuits being brought  
24 would be very, very small, if not none, because of the  
25 protection of the Bankruptcy Court.

1 THE COURT: Um-hmm.

2 MR. SMITH: The concern that was really expressed to  
3 us was during the period after the resolution, what we were  
4 referring to as a statute of limitations --

5 THE COURT: Um-hmm.

6 MR. SMITH: -- where the access to the court or  
7 access to a means to pay for attorney from the city or from  
8 whatever other sources would be much more questionable, so  
9 when we were discussing with underwriters, the primary focus  
10 of exposure was the post-Chapter 9 proceeding period on the  
11 assumption that during the proceedings, the Court would  
12 protect them.

13 THE COURT: Um-hmm. Okay. So you didn't  
14 contemplate the concept that even after confirmation, court  
15 permission would be required to file a lawsuit; is that  
16 right?

17 MR. SMITH: No, sir. That was not discussed --

18 THE COURT: That was not discussed.

19 MR. SMITH: -- in the tail period.

20 THE COURT: Okay. Thank you, sir. You may sit  
21 down. And I'd like to talk to the two members of the  
22 committee who are here, please.

23 MS. RENSHAW: At the podium, your Honor? At the  
24 podium?

25 THE COURT: Yes, please. And what is your name?

1 MS. RENSHAW: Terri Renshaw.

2 THE COURT: And what is your name, please?

3 MS. WILSON: Gail Wilson.

4 THE COURT: Okay. Ms. Renshaw, let's see. You  
5 submitted one of the two declarations --

6 MS. RENSHAW: Yes, sir.

7 THE COURT: -- in support.

8 MS. RENSHAW: Um-hmm.

9 THE COURT: And you did, too. Both of you did.

10 MS. WILSON: Yes.

11 THE COURT: Yes. Okay. I take it neither of you  
12 have been sued.

13 MS. RENSHAW: That's correct.

14 MS. WILSON: That is correct.

15 THE COURT: Okay.

16 MS. RENSHAW: As far as we know as of today.

17 THE COURT: Fair enough. You're right. It's  
18 possible that you don't know, but as far as you know, you  
19 haven't been sued.

20 MS. RENSHAW: Right.

21 THE COURT: Okay. Let me just ask you directly.  
22 Have any of -- have either of you -- either of the two of you  
23 received any specific threats of lawsuits?

24 MS. RENSHAW: I have not.

25 MS. WILSON: No, I have not.

1           THE COURT: You have not. I know this is hearsay,  
2 but I'm going to ask it anyway because I'm the judge. Have  
3 you heard from other members of the committee whether they  
4 have been sued or whether they have received any overt  
5 threats of being sued?

6           MS. RENSHAW: I have not heard that any other  
7 committee member has been sued, and I have not heard from any  
8 other committee member that they have been threatened with  
9 suit.

10          THE COURT: Um-hmm.

11          MS. WILSON: I have not heard that any committee  
12 member has actually been sued. I have heard from various  
13 committee members that individuals have alleged that they  
14 would sue, have threatened that they would sue.

15          THE COURT: Um-hmm. Which members of the committee  
16 made those suggestions to you?

17          MS. WILSON: Gail Turner --

18          THE COURT: Um-hmm.

19          MS. WILSON: -- and Ed McNeil.

20          THE COURT: Um-hmm. And remind me who they are or  
21 who they represent or what their capacity is on the  
22 committee.

23          MS. WILSON: Gail Turner is a member, but she also  
24 serves with an association, which I believe is the Detroit  
25 Police --

1 THE COURT: Um-hmm.

2 MS. WILSON: -- Command Officers --

3 THE COURT: One of the association.

4 MS. WILSON: I'm not quite sure of the name.

5 THE COURT: Okay.

6 MS. WILSON: Ed McNeil serves as the representative  
7 for AFSCME --

8 THE COURT: Yes, of course.

9 MS. WILSON: -- the retiree chapter.

10 THE COURT: Okay. Can you give me or did they give  
11 you any more specifics about what those threats involved or  
12 what they were, or it was just a general statement?

13 MS. WILSON: I was not there when the threats were  
14 made.

15 THE COURT: I'm asking you what they told you about  
16 them.

17 MS. WILSON: Essentially after the most recent OPEB  
18 settlement, individuals were concerned and angry and  
19 indicated that additional actions may be taken.

20 THE COURT: Um-hmm. Would it address your very  
21 understandable concerns about being sued in this environment  
22 if the city were to set aside a fund of money to pay lawyers  
23 to represent you?

24 MS. RENSHAW: Depending on the amount of the fund --

25 THE COURT: Assuming it was sufficient, yes.

1 MS. RENSHAW: It certainly would go a long way of  
2 addressing our concerns and my personal concerns.

3 THE COURT: Um-hmm, yeah. I'm asking you  
4 personally.

5 MS. RENSHAW: And my personal concerns, yes.

6 THE COURT: Ms. Wilson.

7 MS. WILSON: The same for me as long as there was  
8 some proviso that should for some reason the fund be  
9 depleted, that there --

10 THE COURT: Um-hmm; right.

11 MS. WILSON: -- was some consideration for  
12 additional.

13 THE COURT: Right. Mr. Alberts, Ms. Lennox, I want  
14 to see you at the side of the bench.

15 MS. RENSHAW: Are you finished with us, sir?

16 THE COURT: Yes.

17 MS. RENSHAW: Thank you.

18 THE COURT: Thank you. I'm sorry. I should have  
19 said that. You're all set. Let's talk over here.

20 (Side bar conference at 10:37 a.m., until 10:39 a.m.)

21 THE COURT: All right. I'm going to adjourn this  
22 matter not until next Wednesday but next Tuesday at ten  
23 o'clock, and I will give you a decision then. Anything  
24 further at this time? If not, I will see, I assume, some of  
25 you at 2:30.

1 MS. LENNOX: Correct, your Honor.

2 THE COURT: All right.

3 MS. LENNOX: Nothing further at this time.

4 MR. ALBERTS: Thank you, your Honor.

5 THE CLERK: All rise. Court is in recess.

6 (Proceedings concluded at 10:39 a.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

March 10, 2014

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Lois Garrett